STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 16, 2000
v	No. 213338 Calhoun Circuit Court
JAMES EARL GORDON, Defendant-Appellant.	LC No. 97-004027-FH

Before: Bandstra, C.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant James Earl Gordon was convicted in a jury trial of operating a motor vehicle under the influence of alcohol and causing death, MCL 257.625(4); MSA 9.2325(4), and operating a motor vehicle under the influence of alcohol and causing serious impairment of a bodily function, MCL 257.625(5); MSA 9.2325(5). He appeals as of right. We affirm.

Defendant contends that the trial court erred by refusing to suppress defendant's blood alcohol results. We disagree. Although we review a trial court's findings of fact within a motion to suppress for clear error, the trial court's ultimate decision is reviewed de novo. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). When a motion to suppress is based on a claim that a magistrate improperly issued a search warrant, we review the magistrate's decision by evaluating the search warrant and its underlying affidavit in a "common-sense and realistic manner" to determine "whether a reasonably cautious person could have concluded that there was a 'substantial basis' for the finding of probable cause." *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992).

Defendant contends that the affidavit in support of the search warrant was deficient because the allegations of criminal activity were not made with personal knowledge.[1] The affiant, Officer Bohannon, did not personally find evidence of alcohol consumption, smell alcohol on defendant's breath, or prepare the affidavit with any personal knowledge that alcohol was involved in the accident. The affidavit was based on the knowledge of defendant's fiancee, Debra Lynn Sparks, who advised Bohannon that defendant had consumed "6 or 7 beers and a pint of Hennesey" before driving his vehicle, running a stop sign, and hitting the victims' car.

Defendant argues that the affidavit does not indicate that defendant's fiancee spoke with personal knowledge, as required by MCL 780.653; MSA 28.1259(3). The requirement of personal knowledge must be satisfied from the information provided or material facts. *People v Rosborough*, 387 Mich 183, 198-199; 195 NW2d 255 (1972). In support of his argument, defendant cites *People v Spencer*, 154 Mich App 6, 14-16; 397 NW2d 525 (1986), in which this Court held that an affidavit was insufficient to establish personal knowledge because it stated only that the previously reliable informant advised that the suspect "was active in buying and selling stolen vehicle parts." Personal knowledge can be inferred from the facts contained in the affidavit. *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). The specificity of details provided by the informant may provide sufficient indicia of personal knowledge on the part of the informant to satisfy the requirement. *Id*. Sparks' statement that defendant drank "6 or 7 beers and a pint of Hennesey drinking alcohol" was more specific than the informant's statement in *Spencer* because Sparks knew how much and what alcohol defendant consumed. In *Spencer*, *supra* at 15, on the other hand, the only averment of criminal activity from the informant was that the defendant was "active in buying and selling stolen vehicle parts"; this statement gave no information from which personal knowledge could have been inferred. Given the specificity of details provided by Sparks, a magistrate could have concluded that she spoke with personal knowledge. The affidavit was not defective. No error is shown.

Defendant also contends that the trial court abused its discretion in sentencing defendant to eight to fifteen years' imprisonment. We disagree. A sentencing court abuses its discretion if it violates the principle of proportionality, which requires that a sentence be proportionate to the seriousness of the crime and the background of the defendant. *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990); *People v Rockey*, 237 Mich App 74, 79; 601 NW2d 887 (1999). As correctly noted by defendant, this Court reviews sentencing decisions for an abuse of discretion. *People v Alexander*, 234 Mich App 665, 679; 599 NW2d 749 (1999).

Defendant contends that the trial court was required to consider the seriousness of the circumstances surrounding the defendant, in addition to the seriousness of the crime. While we agree with defendant's general statement, we disagree that the trial court failed to take into account defendant's circumstances. The trial court noted that a death resulted from defendant's actions, and that defendant had a "rather low likelihood of rehabilitation." Specifically, the trial court referenced defendant's "1991 drunk driving conviction, and a 1984 driving while impaired conviction." The trial court may take into account the defendant's criminal history, as well as his or her social and personal history. *People v Ross*, 145 Mich App 483, 495; 378 NW2d 517 (1985). Defendant's criminal and social history presented more than simply a picture of a recidivist; it presented a picture of a person whose criminal problems were all due to alcohol abuse, the same factor that led to the accident in the present case. The trial court further noted that, unlike a situation in which a driver was unaware that he or she had too much to drink, several witnesses attempted to inform defendant about his condition before the accident. Further, the presentence investigation report (PSIR) indicated that along with the two previous OUIL convictions, defendant had four other misdemeanors, at least one of which was alcohol related. The probation agent who prepared the PSIR also noted that defendant had "numerous calls out to his home for domestic disputes-alcohol related" and that defendant was ordered by the court to attend substance abuse class for his 1991 conviction of operating a motor vehicle while under

the influence of intoxicating liquor, MCL 257.625(1); MSA 9.2325(1). In light of defendant's long history of alcohol related offenses and problems, his failure to address that situation, and the fact that a death and serious injury occurred as a result of defendant's alcohol abuse, the court did not abuse its discretion in the sentence it assessed.

We affirm.

/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra

[1] Defendant also based his motion to suppress on a claim that he was not informed of his rights to a chemical test. However, he does not raise that issue on appeal.